

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PINNACLE MARKETING GROUP, INC.,

Case No. C17-05172

Plaintiff,

SECOND AMENDED COMPLAINT

V.

GOLIN/HARRIS INTERNATIONAL,
INC., a Virginia corporation, THE
INTERPUBLIC GROUP OF COMPANIES,
INC., cka IPG MEDIA, a Delaware
Corporation, CMGRP, INC., a New York
corporation, and JOHN AND JANE DOES
1-4,

Defendants.

GOLIN/HARRIS INTERNATIONAL,
INC.,

Counterclaimant

V.

PINNACLE MARKETING GROUP, INC.,

Counter-Defendant

Plaintiff Pinnacle Marketing Group, Inc. (“Pinnacle”) alleges:

I. THE PARTIES

1. Pinnacle is a Washington corporation with its principal place of business in Vancouver, Washington.

1 2. Defendant Golin/Harris International, Inc. (“Golin”) is a Virginia corporation,
 2 registered to do business in the State of Washington. Defendant The Interpublic Group of Companies,
 3 Inc., cka IPG Media (“IPG Media”), is a Delaware corporation that exercised control over Golin.
 4 Defendant CMGRP, Inc., cka “Canvas Blue”, is a New York corporation, registered to do business in
 5 the State of Washington. Defendant John and Jane Does are individuals that aided and abetted the
 6 named Defendants. Plaintiff has dismissed claims against Defendant Constituency Management
 7 Group, although it was included in the caption and Superior Court action at the time of removal.

8 II. JURISDICTION AND VENUE

9 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. section 1332 based
 10 upon complete diversity of citizenship between Plaintiff and Defendants. The amount in controversy
 11 exclusive of interest and costs exceeds \$75,000.

12 4. Venue is proper here pursuant to 28 U.S.C. section 1391 in that Defendants are subject
 13 to personal jurisdiction in this District pursuant to 28 U.S.C. section 1391(c) or (d).

14 III. FACTS

15 5. In the course of its business, Pinnacle secured a Marketing Services Contract (the “MS
 16 Contract”) with a large client (the “Client”). Golin wanted a marketing contract with the Client, but
 17 said it could not work for the Client directly due to regulatory and other restrictions, including
 18 conflicts of interest.

19 6. Golin expressed interest and intent to enter into a formal partnership (merger) with
 20 Pinnacle. Additionally, because Golin was ready and available with needed additional resources to
 21 perform the expanded marketing services covered in Pinnacle’s MS Contract with the Client, Pinnacle
 22 partnered with Golin to perform those services. Pinnacle hired Golin to perform Digital/Social media
 23 services on behalf of the Client, using Pinnacle’s name and email accounts, as Pinnacle’s

1 subcontractor and agent (the “Pinnacle-Golin Subcontract”). Per the parties’ agreement, all work was
 2 to be performed as “Pinnacle”, and all invoices for work performed were to be billed by Pinnacle, for
 3 payment to Pinnacle. Upon providing backup documentation, Golin was to receive a percentage of the
 4 fees attributable to Golin’s Digital/Social work, and Golin would receive no part of any other fees
 5 (such as for Creative work, including graphics, video, photography, design, development and
 6 production of digital assets) arising out of work with the Client.

7 7. As an inducement to partner on the MS Contract for the Client, Golin represented that it
 8 could not, and would not, work for Pinnacle’s Client directly, due to regulatory and other restrictions.
 9 Golin never disclosed that it would explore or execute a “work-around” or circumvention in order to
 10 work for the Client through channels outside of Pinnacle. As a further inducement to enter the
 11 Pinnacle-Golin Subcontract, Golin agreed at all times to present itself as Pinnacle and not as Golin,
 12 and to use Pinnacle’s email domain on all communications with the Client, so that services and
 13 communications would always come from Pinnacle, and not Golin. Golin’s conduct, coupled with its
 14 representations, conveyed its agreement that it would not solicit business from the Client, nor use its
 15 proximity to the Client to establish its own business relationship with the Client and/or “poach” the
 16 Client for its own profit or gain. Upon commencement of Golin’s work for Pinnacle’s Client, Golin
 17 also continued its merger discussions with Pinnacle, including requests for Pinnacle’s financial and
 18 other information, reasonably indicating that Golin was, in good faith, pursuing a more formal
 19 partnership between Pinnacle and Golin.

20 8. While Golin was performing services for the Client as a subcontractor and agent of
 21 Pinnacle, Golin solicited business for its own affiliated company CMGRP, Inc., commonly referred to
 22 as “Canvas Blue,” in direct competition with Pinnacle. Upon information and belief, Golin directed its
 23 employees to establish or utilize the “Canvas Blue” entity as an authorized direct vendor to the Client,

1 while those employees were using Pinnacle's email domain "thepmgco.com" and acting as agents of
 2 "Pinnacle." In early 2016, Golin and CMGRP, Inc. established such a direct relationship with the
 3 Client, and in July 2016, secured their own marketing contract with the Client. Golin then terminated
 4 the subcontract with Pinnacle, and performed the same services directly for the Client, through its
 5 affiliate, Canvas Blue. Because of Golin's actions, the Client has ceased doing any further business
 6 with Pinnacle.

7 IV. CLAIMS

8 **First Claim for Relief** 9 **(Fraud in the Inducement)**

10 9. Pinnacle realleges paragraphs 1 through 8.

11 10. Golin, together with the other Defendants, made the aforementioned
 12 misrepresentations, or omitted to disclose material facts to Pinnacle, to induce Pinnacle to hire Golin
 13 to work on projects under the MS Contract.

14 11. Golin's representations were false. Golin's omissions of fact misled Pinnacle.

15 12. Pinnacle reasonably relied on the truth of the statements, and hired Golin to perform
 16 work with the Client as its agent and subcontractor.

17 13. Golin used its position as Pinnacle's agent and subcontractor to gain access to the
 18 Client, to solicit business from the Client, and to establish a direct business relationship with the
 19 Client, to the detriment of Pinnacle, thereby causing Pinnacle to suffer damages.

20 **Second Claim for Relief** 21 **(Breach of Contract)**

22 14. Pinnacle realleges paragraphs 1 through 13.

23 15. Golin breached the Pinnacle-Golin Subcontract by soliciting the Client's business while
 24 acting as Pinnacle's agent and subcontractor, thereby causing Pinnacle to suffer damages.

Third Claim for Relief **(Interference with Contract / Prospective Economic Advantage)**

16. Pinnacle realleges paragraphs 1 through 15.
17. Golin, together with IPG Media and Canvas Blue, tortuously interfered with Pinnacle's prospective economic advantage with the Client, and Pinnacle's contractual rights in the MS Contract, thereby causing Pinnacle to suffer damages.

Fourth Claim for Relief (Breach of Fiduciary Duty of an Agent)

18. Pinnacle realleges paragraphs 1 through 17.
19. As Pinnacle's agent, Golin owed Pinnacle a fiduciary duty of loyalty.
20. Golin breached its fiduciary duty of loyalty, thereby causing Pinnacle to suffer damages.

**Fifth Claim for Relief
(Breach of Fiduciary Duty of a Partner)**

21. Pinnacle realleges paragraphs 1 through 20.
22. Golin and Pinnacle partnered together to provide services to the Client under a limited partnership agreement between Pinnacle and Golin. Golin and Pinnacle were to provide the services under Pinnacle's name, and to divide the revenues. As such Golin owed a fiduciary duty of loyalty to Pinnacle as a partner in the enterprise.

Sixth Claim for Relief (Unjust Enrichment; Constructive Trust)

24. Pinnacle realleges paragraphs 1 through 23.
25. By their actions, Golin and / or the other Defendants have been unjustly enriched such that equity and good conscience require a constructive trust. In addition to an award of its damages,

Pinnacle requests a constructive trust over funds inequitably received by Defendants from the Client.

Seventh Claim for Relief (Declaratory Judgment)

26. Pinnacle realleges paragraphs 1 through 25.

27. There exists an actual case and controversy of a justiciable nature between Pinnacle and Golin over the terms and performance of the Pinnacle-Golin Subcontract, and the restitution and/or damages due to Pinnacle on account of its breaches of the contract, breaches of fiduciary duty, and tortious interference with the MS Contract. Pinnacle requests a declaration setting forth the rights and obligations of Pinnacle and Golin under the Pinnacle-Golin Subcontract.

* * * *

WHEREFORE, Pinnacle Marketing Group, Inc. requests entry of judgment in its favor against Defendants, and each of them, in a sum to be proven at trial, a constructive trust in its favor and against Defendants, and each of them, and a declaration in Pinnacle's favor against Defendants, together with its costs and disbursements incurred herein.

DATED this 20th day of April, 2017.

ELLIOTT, OSTRANDER & PRESTON, P.C.

By: /s/ John D. Ostrander
John D. Ostrander, WSBA No. 19645
William A. Drew, WSBA No. 38697
Of Attorneys for Pinnacle Marketing Group, Inc.

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the attached SECOND AMENDED COMPLAINT on:

3 Rebecca Francis
4 Tim Cunningham
5 Davis Wright Tremaine LLP
6 1201 3rd Ave Ste 2200
7 Seattle, WA 98101-3047
8 Email: rebeccafrancis@dwt.com
9 Email: timcunningham@dwt.com
10 Of Attorneys for Defendants

- 11 [] by mailing to said attorney(s) a full and correct copy therefor, contained in a sealed
12 envelope, with postage paid, addressed to said attorney(s) as stated above and deposited
13 in the United States Post Office at Portland, Oregon.
- 14 [] by hand delivering to said attorney(s) a true copy thereof.
- 15 [] by faxing to said attorney(s) a true copy thereof.
- 16 [X] by emailing to said attorney(s) a true copy thereof.
- 17 [X] by electronic filing with the District Court's CM/ECF system. The CM/ECF system
18 generated Notice of Electronic Filing constitutes proof of service upon a Filing User in
19 accordance with Fed. R. Civ. P. 5(d).

20 Dated this 20th day of April, 2017

21 ELLIOTT, OSTRANDER & PRESTON, P.C.

22 By /s/ John D. Ostrander

23 John D. Ostrander, WSBA No. 19645
 Attorney for Pinnacle Marketing Group, Inc.